IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 3299 of 1993

Between:

Nehpal Singh Verma S/o.Raghunath Singh
R/o.14-10-403 Jumerath Bazaar
Hyderabad-6

..... PETITIONER

AND

1 The Commissioner of Collegiate Education State of A.P., Hyderabad
2 The Joint Director of Collegiate Education State of A.P., Hyderabad
3 Anwar-Ul-Vloom Evening College, New Mallepally, Hyd
Rep. by Honorary Secretary. (R-3 is impleaded as per C.O. Dt. 12.8.2004 in WPMP.No. 17612 of 2004.)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or other appropriate writ or direction in the nature of a writ, declaring the impugned order dt.4/1/1993 bearing RC.No.1106/PC.III-1/92 issued by the 1st respondent, as illegal and void and consequently direct the 1st respondent and to award U.G.C.Selection grade scale of Rs.3700/- to Rs.5700/- W.E.F. 8/4/86 and pay the salary accordingly including the arrears forthwith in the interests of justice.

Counsel for the Petitioner: MR.B.NALIN KUMAR

Counsel for the Respondents 1 and 2: GP FOR HIGHER EDUCATION

Counsel for the Respondent NO.3: Mr.M.S.CHANDRESH

The Court made the following :

HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.3299 of 1993

ORDER:

The order of the Commissioner of Collegiate Education, dated 04-01-1993, whereby the petitioner was held not eligible for Selection Grade Scale of Rs.3,700/- to Rs.5,700/- with effect from 08-04-1986, taking into account the date of his appointment as 08-04-1970 and in further holding that the petitioner was eligible for Selection Grade Scale of Rs.3,700/- to Rs.5,700/- only with effect from 15-02-1987 since he was appointed as a full-time Lecturer in Hindi from
15-07-1971, is subject matter of challenge, in this writ petition. The petitioner seeks consequential direction to the Commissioner of Collegiate Education (herein after referred to as "1st respondent) to award U.G.C.Selection Grade Scale of Rs.3,700/- to Rs.5,700/- with effect from
08-04-1986 and for payment of salary including arrears thereof.

2. The facts, to the extent necessary for the purpose of writ petition, are as follows:-

The petitioner was temporarily appointed by the 3rd respondent in proceedings dated 4-1-1993, as a part time lecturer in Hindi on consolidated pay of Rs.150/- per month with effect from the date of his joining till the end of academic year 1969-1970. The said appointment was subject to approval of the Executive Board, Vice-Chancellor, Osmania University and the rules and conditions in force from time to time. Again vide proceedings dated 08-04-1970, the

petitioner was appointed as a part-time Lecturer in Hindi in the 3rd respondent-College for Junior Intermediate and was paid on period basis. The said order dated 08-04-1970 was also subject to approval of the Executive Board and the rules and conditions in force from time to time.

3. The 3rd respondent-College, vide proceedings in Ref.No.434/Estt./71, dated 14-07-1971, appointed the petitioner, who was working as part-time lecturer in Hindi since 12-03-1970, as full-time Lecturer in Hindi in the grade of Rs.200-500 with usual allowance with effect from 15-07-1971. This appointment was also made subject to approval of the Executive Board and the rules and conditions in force from time to time. The Executive Board of the 3rd respondent-College, in its meeting, held on 04-12-1972, decided to promote the petitioner to the grade of Rs.300-600 with effect from 06-12-1972 and the petitioner was accordingly informed of the same vide proceedings dated 26-02-1973. This promotion was also made subject to approval of the Executive Board and the rules and conditions, in force from time to time, of the Government, Osmania University and the Management.

4. The 3rd respondent-College, vide its letter dated 22-02-1975, informed the Director of Higher Education that the initial appointment of the petitioner as part-time Lecturer was in March, 1970, that his second appointment as part-time Lecturer in Hindi was on 08-04-1970 in the same college to teach Intermediate classes, that the petitioner could have been appointed in the regular grade of Rs.300-600 from 08-04-1970, that in fact the petitioner had applied on 01-04-1970 to the Principal of the 3rd respondent-College for appointment as full-time Lecturer and that in all fairness, the appointment of the petitioner should be regularized in the grade of Rs.300-600 with effect from 08-04-1970. The 3rd respondent-College sought the approval of the Government in this regard. The Director of Higher Education, vide proceedings in Rc.No.1/K11-2/70/71/AR, dated 18-09-1976, accepted the proposal of the 3rd respondent-College to admit one post of Assistant Lecturer in Hindi in the Hindi Department in the grade of Rs.300-25-600/- with effect from 08-04-1970 for grant-in-aid purposes subject to the condition that there was adequate justification for the post in 1970-1971.

5. It is further stated in the affidavit, filed in support of the writ petition, that

consequent upon these proceedings, the petitioner was treated as having been appointed as full-time Lecturer with effect from 08-04-1970 and that he was paid all arrears of pay treating him as having been appointed as full-time Lecturer with effect from 08-04-1970.

6. The 3rd respondent-College submitted a proposal, vide letter dated 06-08-1992, requesting the 1st respondent to grant approval for implementation of the Career Advancement Scheme to the petitioner. In reply thereto, the 1st respondent, vide letter dated 16-11-1992, informed that in the Supplementary Annual Salary Statement of the petitioner, the date of entry into service was mentioned as 08-04-1970 whereas in the Service Book it was noted that he was appointed as Lecturer in Hindi with effect from 15-07-1971 vide 3rd respondent-College order dated 14-07-1971. The 3rd respondent was requested to clarify the discrepancy and furnish a copy of the order whereby the Director had approved appointment of the petitioner as Lecturer in Hindi, so as to enable further action to be taken in the matter.

7. In reply the 3rd respondent, vide letter dated 23-11-1992, enclosed xerox copies of the appointment letter and the approval accorded by the Director of High Education, and reiterated that the appointment of the petitioner had been approved as a regular lecturer with effect from 08-04-1970.

8. The 1st respondent, vide proceedings in Rc.No. 1106/PC.III-1/92, dated 04-01-1993, objected to awarding Selection Grade Scale of Rs.3700-5700 to the petitioner with effect from 08-04-1986 taking into account the date of appointment as 08-04-1970, contending that it was not correct since as per the entry in the Service Book, the petitioner was appointed as full-time Lecturer in Hindi vide order dated 14-07-1971 with effect from 15-07-1971 only and that the petitioner was entitled for Selection Grade scale after completion of 16 years i.e., only with effect from 15-07-1987 and not earlier from 08-04-1986. The 3rd respondent was requested to submit the Revised Pay Fixation Statement on behalf of the petitioner, on the above lines, for fixation of pay in the Selection Grade Scale of Rs.3,700-5,700 and to forward them to the local fund authorities for approval.

9. The short question which, therefore, arises for consideration in this writ petition is as to whether the petitioner is eligible for Selection Grade Scale of Rs.3700-5700 with effect from the date of his initial appointment as part-time Lecturer on 08-04-1970 or whether he is entitled for the said benefit only with effect from 15-07-1971 on which date he was appointed as a full-time Lecturer in Hindi in the 3rd respondent - college.

10. It is accepted by both sides that Selection Grade Scale is payable to an employee only after his completion of 16 years of service in the cadre of Lecturer.

11. A counter-affidavit and an additional counter-affidavit is filed on behalf of respondents 1 and 2. It is stated therein that since the petitioner was appointed as full-time Lecturer only with effect from 15-07-1971, he was eligible for Selection Grade Scale of Rs.3700-5700 only with effect from
15-07-1987, after completion of 16 years of continuous regular service in the cadre of Lecturer and not from 08-07-1986 since his service prior to 15-07-1971 was only as a part-time Lecturer. It is further stated that under the Career Advancement Scheme, those who have completed 16 years of service as Lecturer, without any break-in-service, exclusive of the leave availed on loss of pay, are eligible to draw the pay scales of Rs.3700-5700 and since the petitioner had completed 16 years
of service only from 15-07-1971, he was eligible for Special Grade Scale of Rs.3700-5700 with effect from 15-07-1987 and was eligible for the next increment only on 15-07-1988. It is further contended that mere admission of the post of Lecturer in Hindi into grant-in-aid with retrospective effect from 08-04-1970, would not entitle the petitioner to get himself admitted to the grant-in-aid post with retrospective effect from 08-04-1970 as he was not appointed as regular/full time Lecturer from that date. It is also stated that the impugned order dated 04-01-1993 is in accordance with the rules and there is no discrepancy in awarding Selection Grade Scale to the petitioner with effect from 15-07-1987, and that without approval of the Annual Salary Statement, no staff member of a private aided college gets his salary from the grant-in-aid.

12. In the additional counter-affidavit, it is stated that the petitioner and the 3rd respondent were in collusion and that the revised proposals for fixation of the

pay in Selection Grade and the service record of the petitioner are kept with the 3rd respondent.

13. The learned Government Pleader for Higher Education contends that no reliance can be placed on the order of the Director of Higher Education dated 18-09-1976, accepting the proposal to admit the post of Assistant Lecturer in Hindi with effect from 08-04-1970 for grant-in-aid purposes, as the said proceedings dated 18-09-1976 neither requires the petitioner to be admitted in the said post of Lecturer in Hindi which was admitted into grant-in-aid with effect from 08-04-1970, nor can these proceedings be construed as regularizing the services of the petitioner as full-time Lecturer of Hindi retrospectively from 08-04-1970. Learned Counsel further contends that the said proceedings dated 18-09-1976 is subject to the condition that there was adequate justification for the post in 1970-1971 and in the absence of adequate justification being shown in this regard by the 3rd respondent, the conditional order dated 18-09-1976 cannot be relied upon by the petitioner.

14. The learned Government Pleader places reliance on G.O.Ms.No.1188/Education, dated 10-05-1966, where under the Andhra Pradesh (Integrated) Educational Rules, 1966, were notified, more particularly, Rules 144 to 147. Rules 146 and 147 read thus:

> "146. Except with the approval of the Inspecting Officer concerned, no appointment of a qualified teacher ordered or continued for more than 6 months should be considered to be otherwise than on probation beginning from the date of appointment. No qualified teacher shall be appointed in a temporary capacity in a permanent post. Any post which is in existence for two years or more shall be deemed to be permanent for the purpose of this rule.
>
> Notwithstanding anything contained in Rule 62, probationers and approved probationers may be discharged for want of vacancies in the order of their juniority. For this purpose each grade appointment for which the qualifications prescribed are the same shall be treated as constituting one unit. In the case of B.Ed. Assistants, the subjects under which they are grouped should be taken into account in the discharge of the junior most in the grade. But if at the time of discharge, the grouping as aforesaid is likely to cause hardship to a B.Ed. Assistant then on the staff with a service of not less than five years in that grade, the unit for discharge shall

be the group of assistants in that grade taken as a whole if the management of the institution can make satisfactory arrangement with the remaining staff of H.S.C. Scheme. A person discharged for want of vacancy shall be reappointed in the next first vacancy that arises unless he is not available or is not willing to take up such
re-appointment.

147. A service register, in the prescribed from (Appendix 35) shall be maintained for every teacher in which every step in the teacher's official life, including the date of appointment, the scale of pay on which he was appointed, temporary and acting promotions of all kinds, the date on which the period of probation is satisfactorily completed, increments, leave to his credit and the leave granted etc., should be regularly and concurrently recorded, each entry being duly verified and attested each by the correspondent. The verification of service shall be made at least once a year and if once year, before the 30th June and if twice a year, before the 30th June and 31st December of a year and entry or entries to that effect shall be made in the service register under the signature of the correspondent. The signature of the teacher concerned in token of having seen the entries made in the service is made. The service register shall also be obtained soon after the verifications of service, registers shall be in the custody of the correspondent and when a teacher takes up service under a different management, the service register shall not be handed over to the teacher but shall be transmitted to the correspondent of the other school which he has joined on a requisition received from the teacher through the new employer."

15. It is however not clear as to whether these "rules" are statutory rules or are executive instructions issued by the Government under Article 162 of the Constitution of India. The "rules" do not make any reference to the provisions of any statute nor is the attention of this Court drawn to any statute under which the power to make these rules has been conferred. It is therefore presumed that these so called "rules" are executive instructions.

16. Rule 144 to 147, relied upon by the learned Government Pleader, are in Chapter IV of the Andhra Pradesh Educational Rules, which relate to the condition of service of teachers employed in secondary schools under private management. Rule 144 requires every teacher to be appointed on the authority of a written order of appointment wherein certain details are required to be specified. Rule 145 provides that where a sanctioned scale of permanent posts in a school provides for a time scale of pay, the salaries attaching to temporary appointment also should be on time scale. In the present case, the post was

sanctioned vide proceedings dated 18-09-1976 which provided for time scale of pay of Rs.300-25-600 and this sanction was accorded with retrospective effect from 08-04-1970. Rule 145 has no application to the facts of the present case.

17. Rule 146, which requires the approval of the Inspecting authority concerned, provides that no appointment of qualified teacher ordered or continued for more than six months should be considered otherwise than on probation beginning from the date of appointment, that no qualified teacher shall be appointed in a temporary capacity in a permanent post, and that any post which is in existence for more than two years shall be deemed to be permanent for the purpose of this rule. Since the petitioner continued for more than two years in the post of Assistant Lecturer, Rule 146 would require the said post to be deemed as permanent. Rule 147 requires a Service Register to be maintained wherein every step in the teacher's official career is required to be recorded.

18. Learned Government Pleader contends that the date of entry into service, as recorded in the Service Register, is conclusive proof of the date on which the petitioner entered into service, and is to be reckoned as the relevant date. The rules, require the register of the petitioner to be in the custody of the 3rd respondent-College. Learned Government Pleader contends that since this rule requires the 3rd respondent-College to keep the service record in its custody, it cannot be said that the service record was entrusted to respondents 1 and 2.

19. It is thus clear that the aforesaid rules, relied upon by the learned Government Pleader, have no application to the facts of the present case. The undisputed facts are that the petitioner was appointed temporarily as a part-time Lecturer with effect from 08-04-1970 and was temporarily appointed as full-time Lecturer with effect from 15-07-1971. While the petitioner contends that his service, for the purpose of being granted the benefits of Selection Grade Scale should be reckoned from 08-04-1970 i.e. the date of his initial appointment as a part-time Lecturer, the Learned Government Pleader contends that it is only from 15-07-1971, when the petitioner was appointed as full-time Lecturer, that he is entitled to have his service reckoned
for being granted U.G.C.Selection Grade Scale.

20. Sri B.Nalin Kumar, learned counsel for the petitioner refers to paragraph-3 of the affidavit, filed in support of the writ petition, wherein it is specifically stated thus:-

> "Accordingly the Director of Higher Education issued proceedings dated 18-09-1976 bearing Rc.No.1-K11-2/70-71/AR accepting the proposal of the incharge Principal to admit my post to grant-in-aid in the grade of Rs.300-25-600 with effect from 08-04-1970. I was paid the entire salary as per the said order including arrears arising out of the difference in pay scales. Eversince then my date of appointment was taken as 08-04-1970 and no question was raised with regard to same." (Emphasis supplied)

21. This categorical averment in the affidavit has not been denied by respondents 1 and 2 either in the counter-affidavit or in the additional counter-affidavit. It is thus clear that the petitioner was paid the entire arrears of salary, representing the difference in pay scales, and was continued to be paid the said scales treating him as having been appointed in the full-time post of Assistant Lecturer with effect from 08-04-1970, till the impugned order dated 4-1-1993 was passed rejecting his request for grant of Selection Grade Scale of Rs.3700-5700 with effect from 08-04-1970. Since the respondent authorities have acted upon the proceedings dated 18-09-1976, issued by the then Director of Higher Education, and paid all arrears of differential salary treating the petitioner as having been appointed as full-time Lecturer with effect from 08-04-1970, it is not open to them, to contend otherwise.

22. The contention of the learned Government Pleader that only the post of Assistant Lecturer was admitted to grant-in-aid, and not the petitioner, cannot also be accepted. A perusal of the said proceedings dated 18-09-1976 makes it clear that one post of Assistant Lecturer in Hindi was accepted for grant-in-aid with effect from 08-04-1970. The very fact that said post of Assistant Lecturer in Hindi was admitted to grant-aid with effect from 08-04-1970 itself establishes that it was admitted to grant-in-aid post only, in view of the fact that the proposal submitted by the 3rd respondent-College on 20-12-1975 requesting that the petitioner's services be regularized treating him as full time lecturer from 8-4-1970, was favourably considered. The petitioner has therefore to be deemed as having been appointed as full-time Lecturer with effect from 08-04-1970.

23. The other contention of the learned Government Pleader that in the absence of any adequate justification being shown, as required in the proceedings dated 18-9-1976, no reliance can be placed on the said proceedings, cannot also be accepted. The very fact that the respondents have all along acted upon the said proceedings, have paid arrears of salary to the petitioner and continued to pay him the scales of pay applicable for the grant-in-aid post taking 08-04-1970 as the date of his appointment as a full-time Lecturer, itself shows that there was adequate justification for the full time post of Assistant Lecturer in Hindi during the year 1970-1971.

24. The contention of the Learned Government Pleader that the petitioner was temporarily appointed on hourly basis which indicates that he was as a part-time Lecturer is of no consequence. The proposals submitted by the 3rd respondent-college on 20-12-1975, clearly reveals that the petitioner ought to have been appointed in the regular grade of Rs.300-600 with effect from 08-04-1970, that since not being so appointed was not in fairness to him the 3rd respondent-College had requested the then Director of High Education to regularize the appointment of the petitioner in the grade of Rs.300-600 with effect from 08-04-1970. It is on the basis of the proposals submitted by the 3rd respondent, vide letter dated 20-7-1975, that the proceedings dated 18-09-1976 was issued, which establishes that the petitioner was entitled to have his services regularized as full-time Lecturer with retrospective effect from 08-04-1970.

25. Having all along treated the services of the petitioner as having been regularized as full-time Lecturer with effect from 08-04-1970 and having paid arrears of salary with effect from that date, it is not open to the respondents at this stage, to contend that he is not entitled to be treated as a full-time Lecturer with effect from 08-04-1970. The respondents are estopped from taking any action contrary to the proceedings of the then Director of Higher Education dated 18-09-1976, more so, when the said proceedings have become final and have been acted upon all along by the respondents.

26. The Writ Petition is accordingly allowed and the impugned order dated 04-

01-1993 is set aside. The petitioner shall be entitled to the benefit of Selection Grade Scale of RS.3700-5700 treating his services, as full-time Lecturer, as having been regularized with effect from 08-04-1970, in terms of the proceedings of the Director of Higher Education, dated
18-09-1976. No costs.

_____

July 20, 2005

KVR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday the Twentieth day of July, two thousand and five.

_____

ASSISTANT REGISTRAR

20th July, 2005.

Kvr

// True Copy //

Section Officer

To

1 The Commissioner of Collegiate Education State of A.P., Hyderabad.
2 The Joint Director of Collegiate Education State of A.P., Hyderabad.
3 The Honourary Secretary, Anwar-Ul-Vloom Evening College, New Mallepally, Hyderabad.

4 Two C.D.Copies ot the GP for Higher Education, High Court Buildings, AP High Court, Hyderabad, (O.U.T.).

5 Two C.D.copies